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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	No. P1300CR20081339
Plaintiff,	Div. 6
vs.	**MOTION TO QUASH SUBPOENA DUCES TECUM**
STEVEN CARROLL DEMOCKER,	
Defendant.	

Pursuant to Arizona Rules of Criminal Procedure 15.6 and 15.7, Mr.

DeMocker hereby requests that the Court quash the subpoena issued by the State to

Anonymizer, Inc. This request is supported by the following memorandum of points

and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

On March 31, the State caused to have issued a subpoena duces tecum on

Aaron East, an employee of Anonymizer, Inc., to provide documents relating to the

following: a purchase allegedly made with Mr. DeMocker's credit card, the

description and purpose of the item purchased, and other information regarding the

computer program Anonymizer. (Exhibit A). The State has been aware that the

Anonymizer software was installed on Mr. DeMocker's computer since December of

2009. (Exhibit B). The subpoena to Anonymizer was not served on Anonymizer until March 31,2010 with a return date of May 4, 2010.

Trial in this matter was set in this matter on May 12, 2009 for May 4, 2010. Trial is now less than three weeks away. Under Rule Arizona Rule of Criminal Procedure 15.6, if disclosure is to be made within thirty days of trial, the State is required to "immediately" provide notice to the Court and the defense when it determines that additional disclosure "may" be forthcoming. See Ariz. R. Crim. P. 15.6 (b). The notice is to include the circumstances and information about when the disclosure will be available. The State has not provided any such notice to the defense or to the Court and did not provide the defense with notice that it had issued any subpoena to Anonymizer. The defense received a copy of this subpoena only as a courtesy from Anonymizer's counsel on April 15, 2010. Therefore, any disclosure pursuant to the subpoena to Anonymizer would be precluded under Rule 15.6 and 15.7. Mr. DeMocker requests that this Court quash the subpoena issued to Anonymizer as untimely issued and without proper notice pursuant to the Arizona Rules of Criminal Procedure for the disclosure of evidence.

DATED this 15th day of April, 2010.

By: _____
John M. Sears
P.O. Box 4080
Prescott, Arizona 86302

OSBORN MALEDON, P.A.
Larry A. Hammond
Anne M. Chapman
2929 N. Central Avenue, Suite 2100
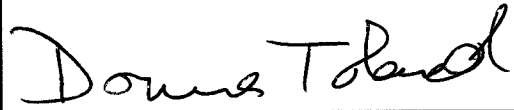Phoenix, Arizona 85012-2793

Attorneys for Defendant

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ORIGINAL of the foregoing sent via Federal Express for
3
filing this 15th day of April, 2010, with:

4
Jeanne Hicks
Clerk of the Court
5
Yavapai County Superior Court
120 S. Cortez
6
Prescott, AZ 86303

7

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COPIES of the foregoing emailed this
this 15th day of April, 2010, to:
9
The Hon. Thomas B. Lindberg
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Judge of the Superior Court
Division Six
11
120 S. Cortez
Prescott, AZ 86303
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Joseph C. Butner, Esq.
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	NO. CR2008-1339
Plaintiff,	Division 6
v.	SUBPOENA DUCES TECUM
STEVEN CARROLL DEMOCKER,	
Defendant.	

TO: Aaron East   FAX 858-866-0164
      Anonymizer, Inc.
      6755 Mira Mesa Blvd.
      Suite # 123-164
      San Diego, CA 92121-4311

YOU ARE HEREBY ORDERED to appear at 8:00 a.m. on Tuesday, May 4, 2010, at the Superior Court (Division 6) in the Yavapai County Courthouse in Prescott, Arizona, and to remain there until excused by the Judge conducting the proceeding, to give testimony on behalf of the State of Arizona, and to bring with you: the following documents:
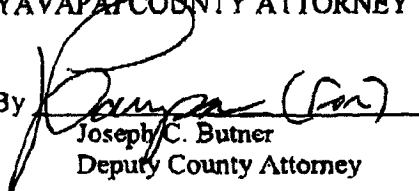
1. Any and all records re: 2/11/2008 purchase by DeMocker with debit card, NBA/VISA debit card # # 4731 5780 0099 3405, to include any records for such purchase 3 days before 2/11/2008
2. Specific name and description of item purchased
3. Purpose and function of the item purchased
4. All company sales brochures and information for the item purchased to include what operating system the item was compatible with
5. Did the purchase include a subscription period for the item purchased
6. How was the item purchased: online or through the toll free number
7. Name of sales person from whom DeMocker purchased item

Given under my hand this _31st_ day of March 2010.

                                        SHEILA SULLIVAN POLK
                                        YAVAPAI COUNTY ATTORNEY

IF YOU FAIL TO APPEAR AS
ORDERED, A WARRANT WILL
BE ISSUED FOR YOUR ARREST.   By _____ (for)
                                        Joseph C. Butner
                                        Deputy County Attorney

PLEASE CALL RHONDA AT 777-7356 ON MONDAY, MAY 3, 2010, BETWEEN 4:00 AND 5:00 P.M. TO CONFIRM TRIAL DATE.

that uses a built in write-blocker to prevent any changes from occurring to the source media (Fujitsu hard drive) during imaging or cloning. The Hardcopy 2 has the option to calculate an MD5 hash value of the clone drive during the cloning process. This option was selected and the MD5 hash value for the clone drive matched that of the MD5 hash value for the original Fujitsu hard drive, calculated by EnCase, when the drive was originally imaged by Detective Hoover. This ensured the data on the clone drive was identical to the data on the original Fujitsu drive. It should be noted the MD5 value calculated for the clone drive is based on the data written to the first 60,011,642,880 bytes of the clone drive. This value correlates to the size of the original Fujitsu hard drive. The remaining space on the clone drive was overwritten (wiped) with the hex 00 character, to prevent any possible cross contamination, and was not factored into the MD5 value. This is standard procedure for cloning data from a source drive to a larger clone drive. The clone drive was placed into item 411.

Examination:

Booting From the Clone Drive

On 12/16/2009 at approximately 0616 hours, Lindvay attempted to boot item 411 from the clone drive. A screen came up showing Windows was trying to "Resume" from its last state. The loading process froze at this point and the laptop was powered off using the laptop's power button. The laptop was powered back on. This time the "Resuming Windows" screen was not seen. The Windows XP splash screen came on followed by a Windows logon screen showing a message to "Please swipe your finger" and "Press Ctrl-Alt-Delete to logon using a password". Lindvay pressed Control-Alt-Delete and the normal Windows logon screen appeared. A user name of "Steven DeMocker" was already pre-filled into the user name field. The password of "se04788" was entered into the password field to continue booting in to the "Steven DeMocker" account. The aforementioned password was provided by Detective Page. As the desktop was loading, numerous applications started automatically. Most of the applications which get started are loaded to run in the background unless specifically interacted with by the user. The "msconfig" application was run to show the applications which are started when the "Steven DeMocker" account is logged into. The icons in the Windows Tray and in the Startup folder were also checked. Some of the applications that are started include Thinkpad Security Suite applications, mouse software, sound card software, Google Desktop Search, HP Imaging Software, Quicktime, iTunes Helper, Norton 360, Windows Live Messenger, Skype, Adobe Reader Speed Launcher, Download Accelerator, Picasa2, and Anonymizer. The listings were documented with photographs.

Item 411 Power Management Settings

The Windows power settings on item 411 were checked and documented with photographs. The power settings can be accessed from two locations. The first is through the "Power Options" item in Control Panels. The second is through the ThinkVantage Power Manager. Both locations show basically the same settings, just displayed in a different layout. The important settings gathered from these screens are as follows: